



Economic Impact Analysis Virginia Department of Planning and Budget

12 VAC 35-40 – Regulations for Providers of Mental health, Mental Retardation and substance Abuse Residential Services for Children
Department of Mental Health, Mental Retardation and Substance Abuse Services Board
June 1, 2006

Summary of the Proposed Regulation

The State Board of Mental Health, Mental Retardation and Substance Abuse Services Board (board) proposes to add a section to the existing Regulations for Providers of Mental health, Mental Retardation and Substance Abuse Residential Services for Children (12 VAC 35-45). The new section will establish a process for issuing an order of summary suspension of the license.

Results of Analysis

There is insufficient data to accurately compare the magnitude of the benefits versus the costs. Detailed analysis of the benefits and costs can be found in the next section.

Estimated Economic Impact

The existing regulations (12 VAC 35-45) provide standards for licensing providers of residential treatment services for children with mental illness, mental retardation or substance use disorders.¹ The board promulgated an emergency regulation in December 2005 that added a new section for issuing an order of summary suspension of the license. In conjunction with any proceeding for revocation, denial, or other action², when conditions or practices exist that pose an immediate and substantial threat to the health, safety, and welfare of the residents, the commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse

¹ Generic standards on children's residential facilities are addressed in Standards for Interdepartmental Regulation of Children's Residential Facilities (22VAC 42-10). 12 VAC 35-45 is an addendum to 22 VAC 42-10 and is usually referred to as "Mental health Module".

² One example is sanction.

Services³ (commissioner) may issue an order of summary suspension of the license to operate a residential facility for children. Now the board proposes a permanent regulation that will replace the emergency regulation.

The proposed regulatory changes allow the commissioner to suspend the license to operate a group home or residential facility for children when there is an immediate and substantial threat to the health, safety, and welfare of the residents, in conjunction with another proceeding to revoke or deny the license. The Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) will notify appropriate agencies⁴ of the issuance of the order of summary suspension and the need to develop relocation plans for residents. Parents and guardians will also be informed of the pending action. According to DMHMRSAS, previously the residential facilities could still operate during the pendency of the concurrent revocation, denial, or other proceedings, which caused threat to the safety and health of the residents. This new section provides a basis for DMHMRSAS to act promptly on egregious circumstances and will better protect children residing in the suspect residential facilities. The possibility of cessation of operations may encourage all licensed residential facilities to maintain good conditions and practices. DMHMRSAS may experience reduced staff time and costs because the agency does not need to conduct frequent inspections⁵ on the residential facilities during the pendency of revocation and denial, as it used to.

Residential facilities subject to the proceedings of revocation or denial of license will be forced to cease operations when there is an immediate and substantial threat to the health and safety of the residents, which will reduce their profit. Since not all of the benefits from the proposed regulatory changes can be measured in monetary terms, it is not known whether total benefit exceeds total cost.

Businesses and Entities Affected

The proposed regulation will provide additional protection for children in the residential facilities that are facing revocation or denial of license. Residential facilities may be forced to

³ “Commissioner” means the Commissioner of the Department of Mental Health, Mental Retardation and substance Abuse Services or his authorized agent.

⁴ Local Departments of Social Services (LDSSs) and Comprehensive Services Act for At-Risk Youth and Families (CSA).

⁵ According to DMMRSAS, the agency may have to conduct weekly or more frequent inspection to ensure the health and safety of the residents if serious problem is found.

cease operations during the pendency of revocation and denial, which will reduce their profit. According to DMHMRSAS, there are 125 residential facilities serving children in the Commonwealth. Up to now, no order of summary suspension has been issued since the emergency regulation took effect. DMHMRSAS may experience a decrease in working time due to reduced number of inspections needed.

Localities Particularly Affected

The proposed regulation affects localities throughout the Commonwealth.

Projected Impact on Employment

Residential facilities that are subject to the proceeding of revocation or denial of license will be forced to cease operations if there is threat to the safety and health of the residents, which will reduce the number of people employed in these facilities.

Effects on the Use and Value of Private Property

Cessation of operations for the residential facilities that are facing revocation or denial of license will reduce their profits and therefore the value of their property.

Small Businesses: Costs and Other Effects

According to DMHMRSAS, all of the 125 residential facilities serving children are small businesses. However, only a few will be affected by the proposed regulation. No order of summary suspension is issued since the emergency regulation took effect in December 2005.

Small Businesses: Alternative Method that Minimizes Adverse Impact

The proposed regulations allow DMHMRSAS to suspend the license to operate a group home or residential facility during the pendency of revocation or denial, if there is an immediate and substantial threat to the health and safety of the children residents. There is no alternative method that could provide similar protection with a lower adverse impact.

Legal Mandate

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007.H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities

to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, Section 2.2-4007.H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.